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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: GOLD FIXING ANTITRUST AND COMMODITY EXCHANGE ACT LITIGATION.[1]	MEMORANDUM ORDER 14-CV-1459 (VEC), 14-CV-1634 (VEC), 14-CV-1638 (VEC), 14-CV-1642 (VEC), 14-CV-1644 (VEC), 14-CV-1701 (VEC), 14-CV-1707 (VEC), 14-CV-1964 (VEC), 14-CV-2102 (VEC), 14-CV-2108 (VEC), 14-CV-2124 (VEC), 14-CV-2134 (VEC), 14-CV-2135 (VEC), 14-CV-2213 (VEC), 14-CV-2214 (VEC), 14-CV-2310 (VEC), 14-CV-2391 (VEC), 14-CV-2550 (VEC), 14-CV-2807 (VEC), 14-CV-2851 (VEC), 14-CV-2917 (VEC), 14-CV-2948 (VEC), 14-CV-3006 (VEC), 14-CV-3111 (VEC), 14-CV-4095 (VEC), 14-CV-5135 (VEC), 14-CV-5153 (VEC)

VALERIE CAPRONI, United States District Judge:

In general,[2] Plaintiffs in these cases bring claims under the Commodity Exchange Act ("CEA"), 7 U.S.C. § 1 *et seq.*, antitrust claims under Section 1 of the Sherman Act, 15 U.S.C. § 1, and claims for unjust enrichment. On June 16, 2014, the Court concluded that it would appoint interim class counsel for a single putative class. Familiarity with that memorandum order is assumed. Five applications for appointment were then submitted on behalf of the following law firms: (1) a joint application from Lovell Stewart Halebian Jacobson LLP ("Lovell") and Hausfeld LLP; (2) a joint application from Robbins Geller Rudman & Dowd LLP ("Robbins Geller") and Susman Godfrey LLP; (3) a joint application from Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel") and Berger & Montague, P.C.; (4) an application from Bernstein Liebhard LLP; and (5) an application from Cafferty Clobes Meriwether &

[1] This caption is for convenience and brevity only. The above-listed cases have not been consolidated, though the Court is aware of the pending referral to the Judicial Panel on Multidistrict Litigation.
[2] The structure of the legal claims in each of the above cases differs to some degree, but all claims are based on largely the same core factual allegations.

Sprengel LLP ("Cafferty Clobes") seeking a joint appointment with one or both of Lovell and Hausfeld. For the reasons that follow, the Court concludes that the team of Quinn Emanuel and Berger & Montague would best serve the interests of the class.

DISCUSSION

Before analyzing the merits of the pending applications, the Court first notes its appreciation for the Lovell-Hausfeld team's compliance with the page limits set at the May 5, 2014 hearing and set forth in the Court's May 28, 2014 order. The same cannot be said for the Quinn-Berger team and the Robbins-Susman team. Their submissions included cases beyond the limitations set by the Court and upon which the Court does not rely. The Court further does not rely upon the Quinn-Berger team's additional promotional materials submitted in contravention of this Court's directions. All counsel are cautioned to submit all future materials in accordance with the Court's orders, including the Court's Individual Practices, as well as any applicable page limits.

Under Rule 23(g)(3) of the Federal Rules of Civil Procedure, the Court "may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action." With twenty-seven lawsuits presently filed in this district challenging Defendants' conduct, interim class counsel is necessary to coordinate efficiently the competing claims and plaintiff groups. *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11-MD-2262, 2011 WL 5980198, at *2 (S.D.N.Y. Nov. 29, 2011) ("The designation of interim class counsel is especially encouraged in cases . . . where there are multiple, overlapping class actions that require extensive pretrial coordination.").

In general, "[c]andidates for interim class counsel are evaluated under the same rubric as potential counsel for certified classes." *Deangelis v. Corzine*, 286 F.R.D. 220, 223 (S.D.N.Y. 2012) (citing *In re Crude Oil Commodity Futures Litig.*, No. 11-CV-3600, 2012 WL 569195, at

*1 (S.D.N.Y. Feb. 14, 2012)). Thus, the Court must consider "(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class." Fed. R. Civ. P. 23(g)(1)(A). The Court may also "consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(B). Where, as here, "more than one adequate applicant seeks appointment, the court must appoint the applicant best able to represent the interests of the class." Fed. R. Civ. P. 23(g)(2).

After examining the competing applications, the Court concludes that all applicants have conducted sufficient work in investigating potential claims against Defendants, have adequate experience handling class actions, and possess sufficient knowledge of the applicable law. But given that the putative class is challenging the conduct of five major banking institutions over a period of at least ten years, successful prosecution of this litigation will require a massive commitment of resources from interim class counsel. In that regard, the Court is not persuaded that Cafferty Clobes or Bernstein Liebhard have the resources necessary to represent the putative class in litigation of this scale. Both of these firms applied individually, but at just ten and twenty-four attorneys, respectively, neither firm can provide the same level of service in this case as the other applicants. The Court therefore concludes that only the Lovell-Hausfeld, Quinn-Berger, and Robbins-Susman teams are adequate under Rule 23(g)(1)(A)'s rubric.

The Court must then consider which of these three groups is "best able to represent the interests of the class." Fed. R. Civ. P. 23(g)(2). With just forty-two attorneys between the two firms, the resources available to the Lovell-Hausfeld team are more limited in comparison with the Quinn-Berger and Robbins-Susman teams. These limitations are magnified given the number of other major class actions to which the Lovell-Hausfeld team is presently committed. But these constraints are also somewhat mitigated by this team's ability to partner with other law firms representing plaintiffs in at least eighteen of the related actions filed in this case. While this arrangement gives the Lovell-Hausfeld team the resources to meet the requirements of Rule 23(g)(1)(A)(iv), such a multi-firm structure would not represent the class as efficiently as a smaller group of law firms. Coordinating activity among these firms, about whose qualifications the Court knows very little, would prove unnecessarily costly to the putative class.

This conclusion leaves the joint applications from the Quinn-Berger and Robbins-Susman teams. Representing approximately 700 combined attorneys firmwide for the Quinn-Berger team and approximately 300 combined attorneys firmwide for the Robbins-Susman team, these applicants can marshal significant resources in support of the putative class. Both teams also describe in detail their respective in-house document hosting and review capabilities, which will result in additional savings for the putative class. And although both teams consist of at least some attorneys who are committed to other large class actions, the Court does not expect that these assignments will have a detrimental effect on the prosecution of the litigation here. Further, given this case's size and complexity the Court finds that the hourly rates of the proposed attorneys are generally reasonable. Those rates are also largely consistent with the hourly rates of the other applicants.

Three additional factors persuade the Court, however, that the team of Quinn Emanuel and Berger & Montague will best represent the putative class. First, the Quinn-Berger team's more creative approach in tying its requested attorneys' fees to the size of any common fund weighs in its favor. The proposed structure more effectively aligns counsels' incentives with those of the putative class.

Second, geographical considerations support the selection of the Quinn-Berger team over the Robbins-Susman team. With the exception of one associate, all of the Quinn Emanuel attorneys are based out of New York. And Berger & Montague's attorneys are located in nearby Philadelphia. By contrast, the two Susman Godfrey partners with the most experience are based out of Los Angeles. Only two Susman Godfrey attorneys, one associate and one partner, are based out of New York. And Robbins Geller's team is for the most part located in San Diego. If the MDL Panel decides that these cases should be consolidated in the Southern District of New York, this litigation will be more efficient with more attorneys located in or near New York.

Finally, London Gold Market Fixing Ltd. and two of its five members are headquartered in London. The Court thus expects that at least some discovery will take place in London. Quinn Emanuel's twenty-seven London attorneys compared with no London presence for either Robbins Geller or Susman Godfrey will likely save costs for the putative class. In light of this litigation's scope, the resources available to the Quinn-Berger team, the location of their attorneys, and the proposed structure of their future requests for attorneys' fees if they are successful, the Court concludes that the Quinn-Berger team is best able to represent the putative class.

CONCLUSION

For these reasons, the Court appoints Quinn Emanuel and Berger & Montague as interim class co-counsel. The Clerk of Court is directed to close the following open motions: ECF Nos. 20 and 21 in *Maher v. Bank of Nova Scotia*, No. 14-CV-1459; ECF No. 21 in *AIS Capital Mgmt., L.P. v. Bank of Nova Scotia*, No. 14-CV-1642; ECF No. 17 in *Moran v. Bank of Nova Scotia*, No. 14-CV-2213; ECF No. 12 in *Citra Trading Corp. v. Bank of Nova Scotia*, No. 14-CV-2214; and ECF No. 32 in *Alaska Elec. Pension Fund v. Bank of Nova Scotia*, No. 14-CV-2391. The stay previously entered on May 6, 2014 remains in effect pending the MDL Panel's decision as to whether these cases shall be consolidated before this Court.

SO ORDERED.

Date: July 22, 2014
New York, New York

___Valerie Caproni___
VALERIE CAPRONI
United States District Judge